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Special Report

New California Employment Laws Effective in 2016

California Employer Challenges in 2016

The purpose of this report is to provide a summary of some of the major laws that may impact a client’s operations and to help clients plan and prepare for these new compliance challenges. It is part of our broader commitment to helping clients meet their compliance obligations. The laws covered in this report are effective January 1, 2016. As always, please contact your Human Resources Business Partner if you have any questions.

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AB 1513 - Piece Rate Compensation

Existing law prohibits an employer from requiring an employee to work during any meal, rest or recovery period mandated by an applicable statute or specified regulation, standard, or order, and establishes penalties for an employer's failure to provide a mandated meal or rest or recovery period, and requires rest or recovery periods to be counted as hours worked.

This new law requires the itemized statement provided to employees compensated on a piece-rate basis to also separately state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period. The law also requires those employees to be compensated for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates, separately from any piece-rate compensation. A full reading of the requirements can be found below:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1513

These requirements are complex. Clients compensating employees on a piece rate basis are urged to contact their Payroll Service Representative to help ensure compliance with the new law.

AB 622 E-Verify; Unlawful Business Practices

The federal E-Verify system, administered by the United States Citizenship and Immigration Services, the United States Department of Homeland Security, and the United States Social Security Administration, enables participating employers to use the system, on a voluntary basis, to verify that the employees they hire are authorized to work in the United States. Existing law prohibits an employer from engaging in unfair immigration-related practices against any person for the purpose of retaliating against the person for exercising specified rights.

The new law expands the definition of an unlawful employment practice to prohibit an employer from using the E-Verify system in a manner not required by a specified federal law or not authorized by a federal agency memorandum of understanding, to check the employment authorization status of an existing employee or an applicant who has not received an offer of employment, except as required by federal law or as a condition of receiving federal funds. The law also requires an employer that uses the E-Verify system to provide to the affected employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to

the employee's E-Verify case or any tentative non-confirmation notice. The law includes a civil penalty of \$10,000 for each violation of the law.

AB 970 - Enforcement of Claims by the Labor Commissioner

Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law also provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages.

The new law authorizes the Labor Commissioner to investigate and, upon a request from the local entity, to enforce local laws regarding overtime hours or minimum wage provisions and to issue citations and penalties for violations, except when the local entity has already issued a citation for the same violation. The law prohibits a local entity from issuing a citation to the employer if the Labor Commissioner has already issued a citation to that employer for the same violation.

In addition, existing law requires an employer to indemnify his or her employees for all that the employee necessarily expends or loses in direct consequence of the discharge of the employee's duties or as a result of obeying the employer's directions and provides an aggrieved employee with a private right of action to recover these expenditures.

The new law authorizes the Labor Commissioner to enforce these provisions by issuing citations and penalties to employers for violations of this requirement.

AB 987 - Employment Discrimination

Existing law requires an employer to provide reasonable accommodation of, among other things, a person's disability and religious beliefs and prohibits discrimination against any person because the person has opposed any practices forbidden under the act or because the person has filed a complaint.

The new law prohibits an employer from retaliating or otherwise discriminating against a person for requesting accommodation of his or her disability or religious beliefs, regardless of whether the accommodation request was granted.

AB 1509 – Protections for Family Members

Existing law prohibits employers from discharging or taking any adverse action against any employee or applicant for employment because the employee or applicant has engaged in conduct protected by certain provisions of the Labor Code (ex. generally, making complaints about working conditions or pay, or whistle blowing). The new law further extends these protections and prohibits employers from retaliating against employees for being a family member of an employee who has, or is perceived to have, engaged in activities protected under the Labor Code.

SB 358 – Equal Pay Act

California Labor Code § 1197.5 prevents employers from paying an employee “at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility...” To prove a claim under § 1197.5, an employee had to prove that a member of the opposite sex working “in the same establishment” earned more for equal work on jobs that require equal skill, effort, and responsibility; an employer could defend this practice by showing the pay difference was based on a factor unrelated to gender such as seniority.

The California Legislature determined that this “statutory language makes it difficult to establish a successful” equal pay claim. As a result, it passed SB 358 to improve “the state’s equal pay provisions...” The new law takes three significant steps to achieve this goal: (1) amending § 1197.5; (2) increasing the number of years that an employer has to retain employee records; and (3) creating additional protections for employees who wish to disclose or discuss their wages.

Equal Pay Claims

SB 358 amends Labor Code § 1197.5 by prohibiting employers from paying employees less than a member of the opposite sex for “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions...” This revised language appears to make it easier for an employee to establish an equal pay claim by only requiring an employee to prove that he or she is getting paid less for “substantially similar,” rather than “equal” work. SB 358 does not define the “substantially similar” standard, and also eliminates the “same establishment” requirement of § 1197.5.

The new law also increases the burden on an employer to explain the pay differential between employees. Previously, an employer only needed to prove that the pay difference was based on “a

seniority system, a merit system, a system which measures earnings by quantity or quality of production, or...any bona fide factor other than sex.”

An employer can still defend pay differentials through these reasons. However, it can only avoid liability by establishing that “[e]ach factor relied upon is applied reasonably” and that “one or more factors relied upon account for the *entire* wage differential.” To defend the wage differential through some other “bona fide factor other than sex,” an employer must also demonstrate that “the factor is not based on or derived from a sex-based differential in compensation, is job related with respect to the business in question, and is consistent with a business necessity.”

SB 358 allows employees to pursue an equal pay claim by submitting an administrative complaint with California’s Division of Labor Standards Enforcement or filing a civil lawsuit. An employer also cannot retaliate against an employee for exercising his or her rights under this law.

An employee who successfully proves an equal pay claim may recover backpay, a liquidated damages award equal to the backpay recovery, interest, and any costs and attorneys’ fees incurred in pursuing the action.

Recordkeeping

Current California law requires employers to maintain the records of employee wages “job classifications, and other terms and conditions of employment” for two years. SB 358 increases this period to **three** years.

Pay Disclosures and Retaliation

The California Legislature determined that pay secrecy “contributes to the gender wage gap,” and that while “California law prohibits employers from banning wage disclosures and retaliating against employees for engaging in this activity, in practice many employees are unaware of these protections and others are afraid to exercise these rights due to potential retaliation.”

As a result, SB 358 expressly forbids employers from prohibiting “an employee from disclosing the employee’s own wages, discussing the wages of others, inquiring about another employee’s wages, or aiding or encouraging any other employee to” discuss or disclose wages. However, importantly, the law expressly states that “[n]othing in this section creates an obligation to disclose wages.”

SB 579 – Kin Care and School Activities Leave

SB 579 amends California's Kin Care law. The Kin Care law requires employers to allow employees to use one-half of their accrued sick leave to care for a "family member." The new law requires employers to permit employees to use sick leave for the purposes specified in the Healthy Workplaces, Healthy Families Act of 2014 and prohibits an employer from denying or retaliating against such employee for using sick leave for such purposes

SB 579 also expands coverage of California's school activities leave law which applies to employers with 25 or more employees. Employers are prohibited from discharging or discriminating against an employee who is a parent, guardian, or grandparent having custody of a child in a licensed "child day care facility" or in kindergarten or grades 1 to 12, inclusive, for taking off up to 40 hours of unpaid time off each year for the purpose of participating in school activities, subject to specified conditions.

The new law revises references to a "child day care facility" to instead refer to a "child care provider" and defines "parent" for these purposes as a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in *loco parentis* (effectively parenting) a child. The amended law also allows employees to take unpaid time off to enroll or reenroll their children in a school or with a licensed child care provider.

Minimum Wage Increase Reminder

Effective January 1, 2016, the California minimum wage will increase to \$10.00 per hour. Keep in mind that the increase in minimum wage also affects the salary threshold for certain employees exempt from California's minimum wage and overtime requirements. The specific exemptions impacted are the administrative, executive, and learned professional exemptions. To qualify as exempt under these exemptions, employees must be paid at least double minimum wage. Beginning January 1, 2016, these California exempt employees must receive an annual salary of at least \$41,600.

In addition, the Department of Industrial Relations has adjusted the computer software employee's minimum hourly rate of pay exemption from \$41.27 to \$41.85, the minimum monthly salary exemption from \$7,165.12 to \$7,265.43, and the minimum annual salary exemption from \$85,981.40 to \$87,185.14. Finally, the department has adjusted the licensed physicians and surgeons employee's minimum hourly rate of pay exemption from \$75.19 to \$76.24.

As a reminder, an employee's exempt status also depends on the job duties performed by the employee.